

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.4004 of 2001

ORDER:

1 Aggrieved by the action of the first respondent in mutating the names of respondents 2 and 3 in the municipal records as owners of house bearing No.7-1-33 at Balasamudram, Hanamkonda, Warangal District, the petitioners filed this Writ Petition.

2 The case of the petitioners is that Mr. Karunakar Reddy – husband of the first petitioner and father of petitioners 2 and 3 purchased the aforesaid property under a registered sale deed and was enjoying the property by paying municipal taxes and as respondents 2 and 3 were trying to interfere with his possession, Karunakar Reddy filed O.S.No.912 of 1985 on the file of the Court of District Munsif, Warangal, which was dismissed for default and so respondents 2 and 3 by taking advantage of that fact, had, after the death of Karunakar Reddy, got their names mutated in the municipal records, even without putting them on notice of their claim to that property, and after coming to know about that fact, they filed an application to delete the names of respondents 2 and 3 in the municipal records and mutate their names as successors to that property after the death of Karunakar Reddy, but the same was rejected by the order impugned, and hence this petition.

3 First respondent filed his counter inter alia alleging that Karunakar Reddy and Koka Komaraiah jointly purchased 800 sq. yards of property under a registered document and divided into plots of 400 Sq. Yards each and that 400 Sq. Yards of site allotted to the share

of Karunakar Reddy was again divided among three brothers i.e. Karunakar Reddy and respondents 2 and 3 and thereafter Karunakar Reddy filed O.S.No.912 of 1985 which was dismissed for default. As Karunakar Reddy sold away his share under a notarized document dated 18.1.1990, respondents 2 and 3 applied for mutation before the Revenue Divisional Officer and the Revenue Divisional Officer by impounding the said document under Section 47 of the Indian Stamp Act levied stamp duty and penalty and so on an application filed by respondents 2 and 3 their names were mutated in the place of Karunakar Reddy and so petitioners are not entitled to any relief.

4 Second respondent filed his counter affidavit on behalf of respondents 2 and 3 inter alia contending that they purchased 133 sq. yards allotted to the share of Karunakar Reddy under an agreement of sale in 1990 and that property was mutated in their names after the death of Karunakar Reddy as the Revenue Divisional officer, by impounding the agreement of sale, collected stamp duty and penalty under Section 47(A) of the Stamp Act. Since they were minors by the date of purchase of the land by Karunakar Reddy in 1963, the sale deed was obtained in the name of Karunakar Reddy. During the family partition in 1979 they agreed to divide that 400 sq. yards into three equal shares. As Karunakar Reddy wanted to perform the marriage of his daughter he sold away his share of 133 sq. Yards to them under an agreement of sale dated 18.1.1990 and paid the consideration payable to Karunakar Reddy. AS the petitioners with the help of 10 other persons demolished the compound wall between the houses Cr.No.377 of 2000 was registered under sections 448 and

427 IPC against the petitioners and so they are not entitled to any relief.

5 Heard the learned counsel for the petitioners and Sri V.Durga Nageswara Rao standing counsel for the first respondent. There is no representation on behalf of respondents 2 and 3.

6 The contention of the learned counsel for the petitioners is that first respondent who has no right to decide the question of title, had without keeping in view the Hyderabad Municipal Corporation (Registry of the Transfer of Ownership of Properties in the Assessment Book) Rules, 1965 ('1965 Rules'), relating to mutation of names in cases of voluntary transfer by owners, decrees etc, erred in mutating the names of respondents 2 and 3 in the register after the death of Karunakar Reddy even without notice to the petitioners, who are the only legal heirs to the estate of Karunakar reddy and that after the interim order in WPMP No.5152 of 2001 filed in this petition, suspending the impugned order, first respondent mutated the names of the petitioners also along with the names of respondents 2 and 3, and in any event since mutation of names of respondents 2 and 3 in the municipal register is improper the order impugned may be set aside. The contention of the learned standing counsel for the first respondent is that since respondents 2 and 3 produced a Notarised agreement of sale over which stamp duty and penalty was paid, the first respondent mutated the names of the respondents 2 and 3 in the assessment register.

7 Respondents 2 and 3 did not seek mutation of their names in the municipal register during the lifetime of Karunakar Reddy. They

sought mutation only after his death. As per 1965 Rules mutation of names in the assessment register can be made on an application by a party in cases of absolute transfer of title, or in consequence of a decree of a Civil Court, or due to succession. The case of respondents 2 and 3 does not fall under any of the categories mentioned in 1965 Rules. It is well known that agreement of sale does not transfer title. Payment of stamp duty and penalty cures the defects relating to the document being insufficiently stamped and consequences under Section 35 of the Indian Stamp Act and makes the document admissible in evidence. But it does not cure the effect of non-registration. Title to the property worth more than Rs.1,000/- can be transferred only through registered sale deed. It is not even the case of respondents 2 and 3 that they have a registered sale deed in their favour.

8 Question whether the property purchased by Karunakar Reddy was for the joint family or not or whether the agreement of sale relied on by respondents 2 and 3 confers title on them or not, cannot be decided by the first respondent. If respondents 2 and 3 feel that they have acquired title to the property by virtue of the agreement of sale being relied on by them, they should obtain a declaration from the Court about their ownership. The counter affidavit of the first respondent shows that mutation was effected on the basis of an agreement of sale, which is not contemplated by 1965 Rules. So mutation of names of respondents 2 and 3 in the municipal register made by the first respondent, that too without notice to the petitioners, who are the legal heirs of the estate of Karunakar Reddy is

mischievous and unwarranted. Therefore, the order impugned is liable to be and hence is set aside.

9 Accordingly the Writ Petition is allowed with costs to be paid by the first respondent. Mutation of names of respondents 2 and 3 in place of Karunakar Reddy in the municipal register is ordered to be set aside. This order does not prevent respondents 2 and 3 from pursuing the remedies open to them in a civil Court.

C.Y.Somayajulu, J.

07-11-2007

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